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IN THE

Supreme Court of the United States

October Term, 1964 No. 419

BEN LAPENSOHN, *Petitioner*

v.

COMMONWEALTH OF PENNSYLVANIA, *Respondent*

October Term, 1964 No. 420

RAYMOND COHEN, JOHN JOSEPH ELCO, JOSEPH E. HARTSOUGH, ABRAHAM D. BERMAN, *Petitioners*

v.

COMMONWEALTH OF PENNSYLVANIA, *Respondent*

APPENDIX TO BRIEFS IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI

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Assistant District Attorney

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First Assistant District Attorney

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THE LEGAL INTELLIGENCER, 10 S. 37TH ST., PHILA. 19104

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COMMONWEALTH'S ANSWER TO [First] PETITION FOR CONTINUANCE

IN THE SUPERIOR COURT OF PENNSYLVANIA

October Term, 1963, Nos. 273, 274, 275, 277, 278

COMMONWEALTH OF PENNSYLVANIA

vs.

RAYMOND COHEN, JOHN JOSEPH ELCO, JOSEPH E. HARTSOUGH, ABRAHAM D. BERMAN and BEN LAPENSOHN

To the Honorable, the President Judge and Judges of the Superior Court:

The Commonwealth of Pennsylvania, through its attorneys, James C. Crumlish, Jr., District Attorney, and Arlen Specter, Assistant District Attorney, of the City and County of Philadelphia, answers the Petition for Continuance:

The Commonwealth vigorously opposes the application for continuance on the ground that the public interest requires a prompt disposition of these appeals. The defendants were convicted of conspiracy to cheat and defraud Local 107 of the Teamsters Union. Pending the outcome of this appeal, Raymond Cohen continues to act as the chief executive officer of Local 107 through the position of Secreary-Treasurer, through which he has access to the Union's treasury; Edward F. Walker continues to act as a Business Agent, and Recording Secretary.

James R. Hoffa, President of the International Teamsters Union, has publicly announced that he will not remove these officers pending the outcome of these appeals. The Labor Management Reporting and Disclosure Act of 1959, which prohibits any person, who has been convicted of a conspiracy to commit such an offense, from holding Union office, does not apply until "the date of the final sustaining of such judgment on appeal." 29 U.S.C.A. 504(c).

Local 107 consists of approximately 12,500 members; it is extremely important to commercial and industrial activity in the Delaware Valley area and the Commonwealth of Pennsylvania; and the public interest requires that this case be determined promptly so that the policy of the Federal legislation may be effectuated if the convictions are upheld.

The Commonwealth of Pennsylvania answers the specific allegations as follows:

1, 2, 3, 4, 5, 6. Admitted.

7. Petitioners were not denied forty-five days prescribed by law to perfect their appeals. The Trial Judge properly exercised his discretion in refusing bail pending the filing of an appeal. The defendants chose to file an immediate appeal in order to remain at liberty on bail. This procedure was proper, lawful and in accordance with the established practice. The remaining averments of paragraph 7 are admitted.

8. Denied. Donald Wolk, Secretary of Goodway Printing Company, Philadelphia, Pennsylvania, advised Arlen Specter, the Trial Assistant District Attorney and the affiant to this Answer, that Goodway Printing Company could print the record in ample time to meet the filing requirements of the Superior Court. Defendants have written briefs in the lower Court and there is ample time to expand those briefs for timely submission to the Superior Court.

9. Defense counsel have advised Assistant District Attorney Arlen Specter that they believe portions of the record need not be printed, which is true. After the record is reduced, the minimum estimate of eight weeks (as alleged in the Petition for Continuance) would be similarly reduced, thus leaving ample time for the printing of the record by the printers whom defendants have contacted.

10. The engagement of Morton Witkin, counsel for Appellant Ben Lapensohn, need not interfere with the list-

ing of this case for argument in the Superior Court on September 9th. Thomas F. McBride, Special Attorney for the Department of Justice who is assigned to try *United States v. Barrow*, advised Arlen Specter that he has no objection to starting that case on September 9, 1963 after Mr. Witkin has had an opportunity to argue in the Superior Court. Mr. McBride further advised that September 9, 1963 is the start of the criminal session in the Federal Court and that preliminary call ordinarily consumes approximately two hours that morning. According to Mr. McBride, Stanford Shmukler, Esq., co-counsel with Mr. Witkin, could handle the preliminaries until Mr. Witkin arrived. While Mr. McBride's agreements are subject to the approval of the District Court, the Superior Court of Pennsylvania has preference in calling a case in which Mr. Witkin is counsel over the District Court, especially since the Superior Court case can be disposed of without interfering with the trial of the District Court matter. While it is admitted that defense counsel were extensively engaged in the trial and preparation of this case, such allegations are irrelevant to the Petition for Continuance.

11. Denied for reasons set forth extensively above.

12. Respondent is without knowledge or information concerning the allegations of paragraph 12.

WHEREFORE, the Commonwealth of Pennsylvania prays that:

1. The Petition for Continuance be dismissed with the direction that the briefs and record be filed in accordance with the Rules of Court;

2. In the alternative, that the Petition for Continuance be dismissed with leave to file the printed record as promptly as possible, but after the 26th of August;

3. That the Petition for Continuance be dismissed with leave for the appeal to be heard on the typewritten record,

in view of the urgent public interest in disposing of the appeal.

Respectfully submitted,

/s/ ARLEN SPECTER
Assistant District Attorney

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF PHILADELPHIA : *ss:*

ARLEN SPECTER, being duly sworn according to law deposes and says that he is an Assistant District Attorney in and for the County of Philadelphia, that he is authorized to take this affidavit on behalf of the Commonwealth, and that the facts set forth in the foregoing Answer to Petition for Continuance are true and correct to the best of his knowledge, information and belief.

/s/ ARLEN SPECTER
Assistant District Attorney

Sworn to and subscribed
before me this 19th
day of July, 1963.

/s/ MILTON S. LOGAN
Notary Public

My Commission Expires
March 1, 1964

COMMONWEALTH'S ANSWER TO [Second] PETITION FOR CONTINUANCE

IN THE SUPERIOR COURT OF PENNSYLVANIA

October Term, 1963, Nos. 273, 278

COMMONWEALTH OF PENNSYLVANIA

vs.

RAYMOND COHEN and BEN LAPENSOHN

To the Honorable, the President Judge and Judges of the Superior Court:

The Commonwealth of Pennsylvania, through its attorneys, James C. Crumlish, Jr., District Attorney, and Arlen Specter and Gordan Gelfond, Assistant District Attorneys, of the City and County of Philadelphia, answers the Petition for Continuance, filed August 13, 1963, as follows:

The essence of the Commonwealth's opposition, set forth more extensively below, is:

I. The public interest demands that there be a prompt disposition of the appeals from the joint trial of defendants Raymond Cohen, Ben Lapensohn, Edward F. Walker, Abraham D. Berman, Joseph E. Hartsough and John J. Elco so that, if the convictions are upheld, defendants Cohen, Walker and Berman will be barred from holding Union office thereafter, which they continue to hold pending the disposition of these appeals under the Federal Landrum-Griffin Act;

II. The engagement of Morton Witkin, Esq. (counsel for Ben Lapensohn) in the Federal District Court does not take precedence over a case in the Superior Court of Pennsylvania, since this appellate tribunal has specially listed this case for disposition No. 1 on the list of September 9. Aside from the customary preference accorded to the Superior Court, this Court should insist on its superior

status as an appellate court, since the argument involving Mortin Witkin will be allotted only one hour (thirty minutes for each side) and will not, realistically viewed, interfere with the trial of the case in the Federal Court which would probably not start, in any event, until the late morning of September 9;

III. The engagement of Morton Witkin, at most, involves only the appeal of Ben Lapensohn (No. 278) and should in no way affect the disposition of the five other appeals;

IV. The appeals of Cohen and Lapensohn—and especially that of Cohen, who continues to act as the chief executive officer of Local 107 with access to the Union's treasury—should not be severed from the appeals of Abraham D. Berman, John J. Elco, Joseph E. Hartsough and Edward F. Walker, who have not joined in the current Petition for Continuance and whose appeals are still listed on September 9, 1963.

* * * * *

The Commonwealth vigorously opposes the application for continuance and reiterates what has been previously stated in the Commonwealth's Answer to an earlier Petition for Continuance in this matter:

The defendants were convicted of conspiracy to cheat and defraud Local 107 of the Teamsters Union. Pending the outcome of this appeal, Raymond Cohen continues to act as Secretary-Treasurer of Local 107, Edward F. Walker continues to act as a Business Agent and Recording Secretary and Abraham D. Berman continues to act as a Business Agent. James R. Hoffa, President of the International Teamsters Union, has publicly announced that he will not remove these officials pending the outcome of these appeals. The Labor Management Reporting and Disclosure Act of 1959 (the Landrum-Griffin Act), which prohibits any person, who has been convicted of a conspiracy to commit an offense, from holding Union office, does not apply until "the

date of the final sustaining of such judgment on appeal". 29 U.S.C.A. 504(c).

Local 107 consists of approximately 12,500 members; it is extremely important to commercial and industrial activity in the Delaware Valley area and the Commonwealth of Pennsylvania; and the public interest requires that this case be determined promptly so that the policy of the Federal legislation, barring defendants from holding Union offices, may be effectuated if the convictions are upheld.

* * * * *

All of the reasons presently assigned for a continuance have, in essence, been fully considered and rejected by your Honorable Court.

The Commonwealth of Pennsylvania answers the specific allegations as follows:

1. It is admitted that petitioners filed a previous application for a continuance. Those reasons for the prior Petition, as set forth in paragraph 1 of the current Petition, demonstrate that this Court has previously ruled adversely to petitioners on all reasons now advanced.

2. It is admitted that the prior Petition for Continuance was denied by the Superior Court, which decision is res judicata and constitutes a complete disposition on the merits which governs the current Petition.

3. The recital as to the averments of the former Petition for Continuance and the Answer of the Commonwealth to said Petition, referred to in paragraph 3, are admitted.

It should be noted from the letter of Judge Harold K. Wood (Exhibit B to the new Petition) that Judge Wood stated:

> "We will expect you to apply to that Court (referring to the Superior Court of Pennsylvania) for a continuance . . ."

Thus, Judge Wood apparently did not know that this Court had already refused a Petition for Continuance, and it is not apparent from the face of the Petition what facts were presented to Judge Wood since Mr. Witkin's letter of August 7 is not attached to the Petition.

The allegations in the Petition . . . to the effect that the United States Attorney of the Department of Justice, Thomas F. McBride, now opposes a continuance in the Barrow case, and to the effect that the Honorable Harold K. Wood, in charge of the listing of criminal cases in the United States District Court for the month of September 1963, has denied Mr. Witkin's application for a continuance . . . were predicated upon a statement by Mr. Witkin in a letter to the United States Attorney that the argument of the appeal now before your Honorable Court would consume one or two days of Mr. Witkin's time [see letter attached to Petition for Continuance]. The opposition to any adjournment or recess of the Barrow case was based on Mr. Witkin's request for an adjournment of one or two days.

It is specifically denied that there is any requirement for an adjournment of the Barrow case in the United States District Court, wherein Mr. Witkin is one of counsel, for a period of more than one or two hours at most. Arrangements can be made for Mr. Witkin to present his oral argument to your Honorable Court in behalf of his client, Ben Lapensohn, immediately after the opening of court at 10:00 A.M. on September 9, 1963. Such oral argument should be fully concluded within one hour or two hours at most, assuming your Honorable Court will grant that longer period of time for the presentation of argument in Lapensohn's appeal. As averred in the earlier Answer to the Petition for Continuance quoted in the present Petition the United States Attorney, Mr. McBride, had no objection to permitting Mr. Witkin to appear before your Honorable Court on the morning of September 9, 1963 and present his argument, since there are preliminary matters to be taken care

of on the opening day of the session of the United States District Court, and the trial itself would not commence until Mr. Witkin had fully concluded all oral argument he may desire to present to your Honorable Court by noon of September 9 at the latest. The present refusal of a continuance by the Judge of the United States District Court is predicated on Mr. Witkin's assertion that he will be required to consume one or two days in the presentation of his argument before your Honorable Court, a statement which was wholly unwarranted and unjustified.

It is further averred that the appearance of Morton Witkin, Esq., before your Honorable Court on the morning of September 9, 1963 for the time necessary to present his oral argument in behalf of defendant Ben Lapensohn will in no way deprive his client, George Barrow, of representation by counsel at his trial in the United States District Court.

4. The defendants have had the notes of testimony on a daily basis since the commencement of the trial, and therefore have had the complete notes of testimony in this case since June 4, 1963. The opinion of Honorable David L. Ullman is not yet due. In any event, the defendants are in no way prejudiced from asserting their allegations of error without the filing of Judge Ullman's opinion. The Commonwealth is further advised that the original notes of testimony have been transcribed and certified and filed with the Clerk of Quarter Sessions Court for transmittal to your Honorable Court.

5. It is specifically denied that counsel for appellants will be unable to adequately brief the matters they desire to present for consideration to your Honorable Court within the allotted time. On the contrary, every issue in this matter has been fully argued before the Court below. Counsel for all defendants, including counsel for the present petitioners, filed extensive and elaborate briefs in connection with their motions for new trial and in arrest of judgment

and numerous issues were fully argued in the Court below. The Commonwealth knows of no issues in this case which have not been already fully briefed and argued. The preparation of the brief in the present appeal and the presentation of argument in behalf of appellants can be readily prepared in time for argument with no extraordinary demands upon counsel for appellants.

6. The Superior Court of Pennsylvania carefully considered the constitutional rights of all the defendants in denying the previous Petition for Continuance, and none of the rights of defendants will be infringed upon in view of the adequate time for preparation between July 15, the date the appeals were taken, and the September Session of the Superior Court.

WHEREUPON, the Commonwealth of Pennsylvania prays that:

A. The Petition for Continuance be denied, there being no matters now presented which were not fully considered by your Honorable Court in connection with the earlier Petition;

B. Or in the alternative, that the Petition for Continuance filed on behalf of Raymond Cohen herein be denied so that his appeal may be disposed of along with the appeals of John J. Elco (No. 274), Joseph E. Hartsough (No. 275), Edward F. Walker (No. 276) and Abraham D. Berman (No. 277) who have not joined in this Petition.

Respectfully submitted,

GORDON GELFOND
Assistant District Attorney

ARLEN SPECTER
Assistant District Attorney

JAMES C. CRUMLISH, JR.
District Attorney

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF PHILADELPHIA : ss:

GORDON GELFOND, being duly sworn according to law, deposes and says that he is an Assistant District Attorney in and for the County of Philadelphia, that he is authorized to take this affidavit on behalf of the Commonwealth, and that the facts set forth in the foregoing Answer to Petition for Continuance are true and correct to the best of his knowledge, information and belief.

/s/ GORDON GELFOND

Sworn to and subscribed
before me this 15th day
of August, 1963.

/s/ MILTON S. LOGAN
Notary Public

My Commission Expires
March 1, 1964